

Article - Environment

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§5–910.

(a) The General Assembly declares that:

(1) In the application review process, one of the primary mitigation issues is locating the most beneficial area to conduct wetland restoration, creation, or enhancement;

(2) Where unavoidable losses or degradations occur as a result of permitted human activity, there exists a sequential process for mitigation site location which includes consideration of on-site alternatives where it may be environmentally preferable;

(3) Mitigation banking, which allows a person to restore, enhance, or create a functional wetland ecosystem, may offer a sound mitigation alternative and may provide an opportunity to contribute to the goal of no net loss in wetlands acreage and function; and

(4) Mitigation banking may not alter the regulatory requirements of § 5–907 of this subtitle.

(b) The Department shall develop standards and adopt regulations for the creation of wetland mitigation banks, including:

(1) The types and locations of wetlands to be restored, created, or enhanced and the types and locations of wetlands to be filled for which a person may obtain credit through a mitigation bank;

(2) The types and number of credits available through the bank to offset losses by acreage and by function of a wetland to be filled;

(3) The method of wetland construction, supervision, and maintenance to be required of a bank owner seeking to obtain credit for use of the bank;

(4) Maintenance requirements;

(5) Monitoring requirements;

(6) Bonding requirements, to include assurance of wetland function;

(7) Reporting requirements to the Department;

(8) Consistency with developed watershed plans, forest conservation, local growth management policies, and local comprehensive plans;

(9) Requirements for the protection in perpetuity of mitigation banks, through methods that include easements, covenants, or similar mechanisms, that shall be in place at the time credits are withdrawn; and

(10) Public notice and comment requirements, including opportunity for public review and comment on any specific wetland bank.

(c) The standards and regulations adopted by the Department under this section shall ensure that:

(1) The provisions of § 5–907 of this subtitle, including the avoidance, alternative analysis, and minimization of disturbance of nontidal wetlands, are fully adhered to;

(2) The goals of § 5–902 of this subtitle to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain are achieved;

(3) The potential for on–site mitigation is considered whenever it may be environmentally preferable;

(4) Mitigation through a mitigation bank shall be accomplished in service areas:

(i) Determined by the Department in coordination with an interagency review team; and

(ii) That are consistent with federal guidelines; and

(5) For purposes of item (4) this subsection, a service area:

(i) Is the same 8 digit hydrologic unit code watershed in which the mitigation bank is located; and

(ii) May be expanded to include other 8 digit hydrologic unit code watersheds if environmentally justified.

(d) (1) This section may not be construed to require the Department to:

- (i) Establish or fund State mitigation banks;
 - (ii) Fund the establishment of mitigation banking by the private sector; or
 - (iii) Use State lands for mitigation banking.
- (2) The Department may establish mitigation banking through and with the cooperation of the private sector and may use State lands for mitigation banking sites.

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